

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: WAC 02 192 51573 Office: CALIFORNIA SERVICE CENTER

Date: JAN 06 2004

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

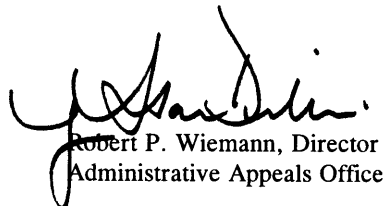
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a dental office. It has seven employees, a gross annual income of \$450,000, and seeks to employ the beneficiary as a dental specialist for a period three years. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel states that: a baccalaureate or higher degree is normally the minimum requirement for entry into the proffered position; a degree requirement is common in the industry in parallel positions among similar organizations; and the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a

specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

As a Dental Specialist, the worker will be mainly responsible for administering dental programs within the Clinic, and also for the effective direction of all activities. Explicitly listed below are the Dental Specialist's specific job duties:

- To plan, and maintain miscellaneous dental programs of the Clinic;
- To confer with [the] Dentist and staff to formulate new policies and improve existing policies and recommend procedural changes (Emphasis petitioner's);
- To develop and implement [a] system to be used by the dental office, clinic and laboratory to assure a smooth flow of work and improve efficiency;
- To formulate personnel hiring, promotion and

termination procedures, and coordinate [the] staff's assigned tasks and work schedules [Emphasis petitioner's];

- To evaluate staff members work performances and ensure all safety procedures are followed [Emphasis petitioner's];
- To solve workers' [sic] procedural problems and demonstrate proper dental techniques [Emphasis petitioner's];
- To coordinate with various dental laboratories that the Clinic utilizes to assure that all work orders are submitted and received in [a] correct and timely manner; [and]
- To review major professional dental journals for dental health issues and development particularly relevant to the dentists' practice, and provide dentists' [sic] with latest information.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide: a detailed job description setting forth specific job duties, the percentage of time to be spent on each duty, the beneficiary's level of responsibility, the hours per week of work, the types of employees to be supervised, and the minimum educational requirements for the position; and evidence that the offered position satisfied satisfies at least one of the criteria of 8 C.F.R. § 214.2(h) (4) (iii) (A).

In response to the director's request, the petitioner provided the following:

The [e]mployer needs the Dental Specialist's services for a temporary period of three years, during which time she will be employed on a part-time basis, working approximately 25-30 hours per week. She will perform her duties independently as an individual staff member under the direct supervision of the Managing Dentist, while her work will be reviewed and inspected regularly. The Dental Specialist will not be in any position to supervise any employees of the company.

As a Dental Specialist, the worker will be mainly responsible for administering dental programs within the clinic, and for the effective direction of all activities. Explicitly listed below are the Dental Specialist's specific job duties and the percentage of

time involved in performing them:

- Will plan, organize, and maintain miscellaneous dental programs of the clinic; 20%
- Will confer with dentist and staff to formulate new policies and improve existing policies and recommend procedural changes; 15%
- Will develop and implement [a] system to be used by the dental office, clinic, and laboratory to assure a smooth flow of work and improve efficiency; 15%
- Will formulate personnel hiring, promotion, and termination procedures, and coordinate staff's assigned tasks and work schedules; 10%
- Will evaluate staff members' work performances and ensure all safety procedures are followed; 10%
- Will solve workers' procedural problems and demonstrate proper dental techniques; 10%
- Will coordinate with various dental laboratories that the clinic utilizes to assure that all work orders are submitted and received in a correct and timely manner; 05%
- Will review major professional dental journals for dental health issues and development particularly relevant to the dentists' practice, and provide dentists' with latest information; 05%
- Will research literature to find research suggestions of modes of treatment for possible diagnosis, eliciting detailed patients' histories, discussing the patients' charts and records with dentists; 05%
- Will supervise billing of patients and insurance companies financially accountable for services rendered; 05%

The petitioner requires the holder of the offered position to possess a degree equivalent to a Doctor of Dental Surgery (D.D.S.). In further response to the director's request for evidence, the petitioner provided the following statements: Emelito Reyes, D.D.S. - Dr. Reyes states his office currently employs a Dental Specialist, and that the minimum educational

requirement for the position is the equivalent of a D.D.S. degree; Alvaro Navas, D.D.S. - Dr. Navas states that his office previously employed a Dental Specialist who assisted in the organization and formulation of a more effective and productive procedural system. The minimum requirement for that position was a D.D.S. degree; and Manuel M. Alberto, D.D.S. - Dr. Alberto states that his clinic employs the services of a Dental Specialist to assist in developing appropriate dental programs and in formulating office procedures and systems. The minimum requirement for the position is a D.D.S. degree. The petitioner also submitted copies of four H-1B approval notices which purportedly were granted to other dental offices for similar positions.

In denying the I-129 petition, the director held that the proffered position did not qualify as a specialty occupation, and stated that baccalaureate level training was not common in the industry for the offered position.

On appeal, counsel states that: a baccalaureate or higher degree is normally the minimum requirement for entry into the proffered position; a degree requirement is common in the industry in parallel positions among similar organizations; and the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree.

A portion of the duties of the position offered are similar to those performed by medical and health service managers. In the *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 75, the Department Of Labor details the duties of a health service managers:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. The term "medical and health services manager" encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

The duties offered to the beneficiary include: planning, organizing, and maintaining dental programs for the clinic; formulating policies and recommendation of procedural changes for office operations and flow of work between the clinic and outside service providers; handling personnel matters and work performance evaluations; and demonstrating dental techniques to staff. These duties are performed by medical and health services managers in that they are included in the planning, direction, coordination and supervision of the delivery of healthcare. The

Handbook notes, however, that while some generalists positions require a master's degree in health services administration, long-term care administration, health sciences, public health, public administration or business administration, a bachelor's degree is adequate for some entry-level positions in smaller facilities, and on-the-job training will suffice for other facilities such as physician's offices. *Id.* at 75. A bachelor's degree is not, therefore, the standard minimum requirement for a health service manager in a small dental clinic such as the petitioner's.

The other duties detailed by the petitioner: research and review of medical literature to be summarized for the dentist; and supervision of patient billing and insurance filings; are not so unique or complex as to require baccalaureate level education to perform them. They are routinely performed by individuals not holding bachelor's degrees in any specific specialty. The petitioner has failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to satisfy the remaining three regulatory criteria:

First, the petitioner has not established that a degree requirement is common to the industry in parallel positions among similar organizations, or, alternatively, that the duties of the offered position are so unique or complex that they can only be performed by an individual with a degree. The petitioner submitted three statements from other dental offices indicating that each employed Dental Specialists, and that a D.D.S. degree was required for each position. The statements did not, however, set forth the duties of those positions. It is, therefore, impossible to determine that those positions are parallel to the position offered. Furthermore, the proffer of three statements is insufficient to establish an industry standard.

The petitioner also provided H-1B approval notices in unrelated cases to establish that Citizenship and Immigration Services (CIS) has already determined that the position of Dental Specialist is a specialty occupation. This record of proceeding does not, however, contain the entire record of proceeding in the aforementioned submissions. In the absence of all of the corroborating evidence contained in those records of proceeding, the approval notices submitted are not sufficient to enable the AAO to determine whether the referenced approvals were approved in error.

Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize

as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding now before the AAO, however, the approval of the prior petitions would have been erroneous. The AAO is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church of Scientology International*, 19 I&N Dec. 593, 597 (Comm.1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. V. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

It should also be noted, with regard to this regulatory criterion, that the duties of offered position do not appear to be so complex or unique that they can be performed only by individuals with a baccalaureate level education in a specific specialty. They are standard duties for the industry.

Second, the petitioner offered no evidence to establish that it normally requires a degree or its equivalent for the position. Even if that were the case, the position would still not qualify as a specialty occupation as the performance of the position's duties does not require the theoretical and practical application of a body of highly specialized knowledge. Cf. *Defensor v. Meissner*, 201 F. 2d 384 (5th Cir. 2000).

Finally, the record does not establish that the nature of the duties to be performed is so specialized or complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties may be performed with the attainment of knowledge provided in various educational programs, or through training and/or job related experience.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.